

Appendix 8a

Tribal Background Information

Part A

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Introduction

Appendix 8 contains information about the American Indian tribes that have reservations, ceded lands, and areas of interest within or bordering the Interior Columbia Basin Ecosystem Management Project (ICBEMP) project area. Twenty-two federally recognized tribes have worked with the project staff, providing information about their respective tribe and concerns.

Appendix 8a is presented in three sections: Summary of General Information Sheets; Evaluating Habitat and Harvestability, and Addressing American Indian Rights and Interests; and Government-to-Government Consultation with American Indian tribes. Appendix 8b (available separately) provides further details on federal court cases with applications for multiple tribes, individual information sheets for each of the affected tribes in the project area, a chronology of the legal status of American Indian tribes, a list of Tribal Employment Rights Ordinance (TERO) contacts, and a discussion of ethno-habitats. The complete appendix (Parts A and B) gives an overall picture of the concerns of the American Indians and how the ICBEMP is striving to incorporate their concerns into ecosystem management of the project area.

Summary of General Information Sheets for Affected Tribes in the ICBEMP Planning Area

The United States government has a unique relationship with federally recognized American Indian tribes. As federal agencies undertake activities that may affect tribes' rights, property interests or trust resources, care should be taken to implement agency policies, programs and projects in a knowledgeable, inclusive, and sensitive manner respectful of tribes' sovereignty and needs.

The general information sheets prepared for Appendix 8 briefly describe each of the 22 affected federally recognized tribes of the project area. Information is presented in the sheets that may be helpful to agency managers in developing an understanding of the federal trust responsibility and individual tribes and their organizational structures, which in turn should prove useful in maintaining agency-tribe relationships. This summary provides background information and an explanation for each subsection in the general information sheets. The individual information sheets are provided separately in Appendix 8b.

NOTE: Although both tribes and agency legal council were provided opportunities to review these EIS appendix materials, the information presented does not necessarily represent either tribal or federal government views, but rather the ICBEMP's best understanding of the affected tribes.

Tribes and Bands

The names of tribes and bands in this section were taken from ratified treaties and signed executive order documents, which formed the basis for a tribe's formal federal recognition. In a few instances, additional names preferred by a tribe to identify a band or tribal subdivision are also noted. Many of the names in this section are anglicized versions of native terms, historical creations, or historical versions of another band's name for the group (usually a neighboring band/tribe). There are other native names and member bands which a tribe may recognize.

Basis for Legal Status

The basis of a tribe's legal status rests within the context of U.S. constitutional provisions for the federal government's powers for treaty making with other sovereign nations, and with American Indian tribes' inherent sovereignty. The treaty-making period between the U. S. government and American Indian tribes ended in 1871. The federal government thereafter relied on agreements (signed by both houses of the Congress) to legally acquire Indian lands, to establish reservations, and to provide federal recognition of tribes and remove Indian peoples to reservations or rancherias.

A tribe's legal status is also derived through agreements with the U.S. government; congressional and executive branch recognition of the tribe; and federal court interpretations of Indian law and legal documents, such as treaties, executive orders, agreements, federal statutes, and other government-to-government agreements. Tribes also have constitutions and by-laws, which formalize their governmental organization and state their relationship with the U. S. government.

Additional sources of legal recognition may be found in federal statutes and congressional acts, which often do not distinguish between federally and non-federally recognized tribes and bands. Examples of the latter include American Indian Religious Freedom Act, Executive Order on Environmental Justice, Native American Graves Protection & Repatriation Act, National Environmental Policy Act (NEPA), National Historic Preservation Act, and Religious Freedom Restoration Act. Also, some states have special agreement documents and established government-to-government relations recognizing a tribe(s)/band, and their interests and needs.

Basis for Off-Reservation Interests and Rights

All tribes have off-reservation interests in public lands and some retain pre-existing rights reserved through treaty or executive order language. Tribal interests in federal lands may be related to traditional and cultural uses; water-land well being, or the socio-economic needs of tribes. Tribal rights typically include treaty-reserved rights to fish, hunt, gather, trap, and graze livestock, and implied rights of water quality and quantity, access to resources, and an environmental right including available healthy and sustainable habitats. Other rights include protection of reservation property, trust resources, air quality, water quality and quantity and social well being.

The legal basis of these tribal interests and rights is founded in the inherent sovereignty of tribes; continuing aboriginal rights; pre-existing rights reserved in treaties and executive orders; agreements (passed by both houses of the federal government); and federal statutes. Some of these in turn have been interpreted through federal court decisions. Where appropriate, examples of a tribe's reserved rights are provided as stated in their treaty or executive order. Congressional direction for tribal socio-economic

self-sufficiency and social well-being on their reservations, along with the federal government's goal of tribal self-determination, provide further basis for tribal interests and rights outside Indian lands.

Additional sources of legal rights may be found in special agreements and recognition provided by states over their long history of relationships with tribes.

Examples of tribal rights and interests in federal agency lands includes: traditional cultural practices; ethno-habitats; various resources associated with tribal rights and interests; ecosystem health; communally valued sacred and legendary places; and socio-economic opportunities such as livestock grazing.

Relevant Federal Court Decisions

Although numerous federal court decisions involve tribal interests and rights, only those federal court cases where a tribe was a named part to the case are listed in this section. Many other cases which may have direct or indirect bearing on a given tribe are not listed because they are too numerous. However, an example set of federal court cases that have regional importance is included in Appendix 8b, available separately.

State court cases have been noted where they have not been taken to a federal court to address a like off-reservation tribal interest or right.

Federal agencies have trust obligations to address effects on tribal interest, rights, and property on reservations, and they are required to disclose known effects through the NEPA process. Some standard federal court cases are cited that discuss federal agency trust responsibilities and obligations to tribes concerning water quality and quantity, air quality, or property of Indian reservations as well as social, economic, and cultural interests and rights.

Land Base

Pre-treaty land base figures are based on acreage of the homelands of tribes and/or lands ceded by tribes to the U.S. government as provided by either tribes or available literature. Reservations have invariably

experienced changes in their size since they were first established, so the original reservation acreage, a sketch of some causes of size changes, and the current reservation acreage are provided.

Trust land refers to tribal land held in trust for the tribe by the federal government, usually through the Department of the Interior's Bureau of Indian Affairs (BIA). *Fee or fee simple land* refers to land within reservation boundaries not federally owned, but owned by the tribe or individuals (tribal or non-tribal members). *Allotted land*, allotted to tribal members through the 1897 Indian Allotment Act until the Indian 1934 Reorganization Act, may be individually owned or land held in trust located either within or outside a reservation. The ownership status of Indian allotments and fee lands are usually not affected when reservations have been abolished by the U.S. government. *Indian country* refers to all land within an Indian reservation except for non-Indian communities. Trust lands, restricted Indian allotments, and federally tribal-dependent Indian communities outside a reservation are also considered Indian country.

Tribal Headquarters

Tribal headquarters are typically both the seat of tribal governments and the location of tribal administration. Bureau of Indian Affairs field offices have often been located in or nearby tribal headquarters. Most tribal government offices are located in more than one building, some in building complexes, and for large tribal organizations they may be spread across reservations and/or in more than one community. However, most federal agency contacts will be directed to a tribe's primary government office - tribal headquarters. Although tribal offices are typically open weekdays, it is generally easiest to contact tribal staff Monday through Thursday. Tribes designate their respective administrative leave days which may or may not coincide with federal holiday and leave days. Many tribes will also close offices when a tribal leader passes on or during their tribal celebrations.

Tribal Population

Estimates of tribal populations from the mid 1800s are typically imprecise owing to the nature of how population numbers were compiled for peoples that actively travelled, and to census takers' imperfect

understanding of band organizations. More recent population figures are based on tribal enrollment numbers that include both reservation and off-reservation residents; however, concern persists in Indian country over underrepresentation, and a campaign has been instituted to get a more accurate census count in the year 2000.

Cultural Affiliation

Each federally recognized tribe has member bands that anthropologists have assigned to one of several Cultural Areas encompassed by the ICBEMP project area. These Culture Areas include the Californian, northern Great Basin, and Plateau. The Blackfoot Tribe is culturally affiliated with the Plains Culture Area. The persistence of fundamental aspects of tribal cultures are typically strongly influenced by both the culture history of a tribe(s) and the broad cultural patterns of these Culture Areas.

Religions

Most tribes continue to practice their communally shared traditional religious and spiritual belief systems, religions that are a blend of traditional and Christian religious systems, and Christianity. Native religious systems and spiritual and healing practices originating from areas outside the ICBEMP project area are also present and respected by tribes.

Languages

All affected tribes speak English as their primary language. However, native languages and dialects are still spoken and many tribes have or are currently developing native language programs to ensure native language survival and use. Some tribes continue to use interpreters to facilitate communications in tribal business meetings.

Governance

This section identifies what sort of tribal organization exists for a tribe and the legal basis for its legal structure. For example, whether a tribe opted for the provisions of the Indian Reorganization Act following its passage is noted, along with whether a tribe

has chosen a self-governance form of organization, or varying forms of self-determination. The latter typically implies one of three trends: (1) integration of BIA staff, (2) decreased reliance on BIA support, or (3) continuance of an existing BIA role in tribal governance. A brief description of tribal government structure is identified including their kind of governing body. The tribe's constitution and by-laws, tribal ordinances and codes, and tribal plans are referenced as appropriate. Operative tribal ordinances and resolutions historically have been subject to Secretary of the Interior review and approval.

Pre-Treaty Economy

Historically, area tribes and bands were economically interdependent and were sustained by subsistence economies that have often been described in legal documents in terms of primary activities, such as fishing, gathering, hunting, trapping, and animal husbandry. Early historical Indian economies were interrelated with the social, political, and religious components of their cultures. These economies were also influenced by non-traditional material goods, (such as guns, kitchen ware, and the like), and economic practices (such as agriculture, the fur trading industry, and others).

Tribal Enterprises

Tribal owned and/or operated enterprises provide socio-economic benefits to tribal membership and tribal interests, and they often provide support to tribal government infrastructure. These enterprises are varied and often reflect tribal values and interests. Many tribal businesses depend on the opportunities of their locations, resources, and interrelationships with states, non-tribal communities, and tourism.

Most are not directly dependent on traditional non-Indian uses of federal lands such as timber harvest, recreation, and livestock grazing. However, some tribes such as the Northern Paiute tribes are increasingly looking toward livestock grazing of federal lands as a means to support tribal socio-economic well-being and economic diversification. Indirect effects of federal land management on tribal enterprises may involve tribal commercial fishing, fisheries, reservation timber industries, mining, oil and gas development, and tourism.

Tribal Private Sector

Tribal member-owned enterprises often range in their variety and are typically less dependent on federal land activities than tribal enterprises. Exceptions are in the areas of commercial and subsistence fishing, gathering, hunting, and grazing.

Education Institutions

Many tribes have or are developing tribal educational systems ranging from preschools to colleges, and work with neighboring non-Indian educational institutions and more distant universities where Indian youth attend. In addition to standard forms of education, some tribes have native language, cultural, and art institutions or programs. Many tribes have educational materials describing their cultural, history, tribal rights/interests, and/or current activities, which may be made available to federal managers and the public.

Museums

Tribal museums, cultural institutes and centers, and cultural interpretative facilities are increasingly being established on or near tribal lands. These are Native American cultural facilities and centers, which provide tribal cultural perspectives and educational opportunities for both tribal members and the public. Some tribes such as the Yakama Indian Nation have sophisticated archival facilities.

Tribal Newspaper

Of the 22 affected ICBEMP tribes, 15 tribes carry a regularly distributed tribal newspaper or newsletter available to all interested subscribers. A few papers are produced at no cost to subscribers. These papers are an invaluable source of information and provide tribal news, media access, local and regional current affairs and events, Indian country issues, and special interest items. Information on federal and state agencies' actions, activities, and meetings are often reported.

Tribal Departments and Programs

Tribal programs with off-reservation involvement are listed to help identify the range of tribal interests in resources and land as well as tribal program activities and capabilities. All but the smallest tribal organizations have tribal departments and programs, which are staffed with technical expertise from a wide range of health, social, natural resource, and administrative disciplines. These may or may not work closely with counterpart Bureau of Indian Affairs office staff depending on tribal government organizational decisions. Those tribes that have chosen a form of self-governance have taken over most past BIA field office departments and roles. Tribes such as the Colville have chosen to cooperatively mix responsibilities between BIA and tribal staff. Still other tribes are currently reviewing how they would prefer to work with local BIA offices.

Tribal Fisheries (Ethno-habitats)

Most affected tribes place an importance on protection and restoration of their socially and traditionally significant habitat places. Primary aquatic habitats for tribal fishing are best known and reported here for each tribe. All culturally significant fish-bearing-capable streams, rivers, and lakes found within a tribe's area of interest (aboriginal homelands and ceded lands included) should be considered probable locations of a tribe's fisheries and/or fishery interests. This includes legally recognized tribal usual and accustomed fishing grounds and stations on and off reservations for those tribes with Stevens Treaties.

This section emphasizes tribal fisheries with continuing social, economic, and/or cultural significance to tribes. However, tribal hunting and gathering areas (ethno-habitats), though less well known, are mentioned for some tribes where well-recognized examples exist.

Subsistence in subsistence areas and ranges refer not only to foods for physical nutrition, but also to lands and resources important for socio-cultural sustenance and maintenance of tribal community well-being.

Tribal Contact

The ICBEMP's primary tribal contact(s), usually an appointed federal agency liaison, or available leadership from smaller tribal organizations, are listed along with their phone and fax numbers. Though agency-tribal relations may lean on such liaison contacts, they should not be considered the sole source for technical or policy information and cannot be used for purposes of project consultation unless the tribal government clearly designates them as such.

Agency Contact

The ICBEMP Bureau of Indian Affairs contact, usually the local BIA office superintendent, and his or her address, phone number, and fax number is provided.

Significant Events and Dates

Socio-cultural: Each tribe and associated communities have social and cultural activities held annually as well as community and extended family events. The latter, such as weddings, funerals, namings, and giveaways, may occur at any time of the year. Taken together these activities help provide an understanding of tribal social life and values. Both types of tribal activities could affect meeting schedules in addition to tribal business schedules depending on employee roles in organizing or participation.

Government: Each tribe has its own electoral system or variation of a type found among other tribes. The times of tribal government elections for tribal and general council positions and how they are performed differ by tribe, owing to differences between tribal constitutions and/or traditional laws. For example, some tribes elect their "council" as a whole, while others elect a council in parts over a period of years. Tribal elections may occur annually or periodically. Elections may be by ballot or through a traditional open voting method. Tribal council meetings may be open to tribal membership on a selective basis or frequent basis. How often a tribal or general council meets to conduct business also varies by tribe. Under-

standing how a tribe generally schedules its time for tribal business may help provide a logistical understanding to facilitate agency-tribal consultation, identify when changes might occur in tribal governing structures, and develop a fuller understanding of a tribal government.

Tribal Governing Bodies

The governing body of a tribe may have one of the following titles: Tribal Council, Business Council, Executive Committee, or Board of Trustees. A tribe's governing body (Council) is typically elected from the general council membership, which consists of enrolled tribal members 18 years of age or older. These councils may be elected by reservation districts, or in other tribes by members at large. A typical tribal governing body will have selected officials (sometimes elected by Council vote) that function as a chair, vice-chair, secretary, treasurer, and in some cases as an assistant secretary and sergeant-at-arms. A chairman or these selected officials sometimes serve to handle specific council decisions, although their roles are often specific to collective Council functions.

Each tribe has a somewhat different tribal government structure depending on its legal and organization history. The terms and available positions elected officials hold vary by tribe in both their tribal council and general council seats and committees membership. All tribes have the first two categories of governmental groups; however, not all function with committees. How tribal governments are organized are usually described in their constitution and by-law documents. The Yakama Nation is an exception in that it never adopted a constitutional form of government, preferring to operate under traditional laws and through ordinances, and general or tribal council resolutions.

Most tribal governments affected by the ICBEMP operate with either a Tribal Council (12 tribes), or a Business Council (7 tribes). However, the Confederated Tribes of the Umatilla Reservation has a Board of Trustees, and the Klamath Tribes and Nez Perce Nation have Executive Committees.

General Council

Most tribes have a General Council, which comprises all enrolled members. Typically, only members 18 years of age or older are entitled to voting rights and certain other privileges of tribal citizenship. General Councils typically have elected officials to address tribal business concerns including a chair, vice-chair, and secretary; some tribes also have one or more interpreters. These positions may be filled by the same officials as on the Tribal Council in some tribes. The relationship between the General Councils and Tribal/Business type Councils is variable, although in most tribes the General Council retains authority to restrict or amend Tribal Council actions and decisions. Certain tribal business issues may be required to be brought before the General Council for review and direction prior to a tribal government decision. General Council meetings may be held through the year to address tribal business at regularly scheduled times or through special meetings. General Councils having the authority to elect tribal council members may also choose to express direction to a Council through an electoral avenue either at regular or early elections.

For those tribes that do not have a General Council, tribal membership participate as a rule in the regular Tribal/Business Council meetings. Examples of tribes in this category include the following: Coeur d'Alene Tribe, Salish and Kootenai Tribes of the Flathead Reservation, Shoshone-Paiute Tribes of the Duck Valley Reservation, Pit River Tribe, and the Quartz Valley Indian Community of the Quartz Valley Reservation.

Committees, Commissions, and Boards

Tribes typically develop and implement policies through the use of a variety of committees, commissions, boards and/or task forces. Those listed in this section of the general information sheet provide both an indication of the breadth of issues tribes routinely address, and the groups with whom federal land

managing agencies may necessarily work directly. Each tribe may use these organizational groups in different ways and empower them with different kinds of responsibilities and degrees of authority.

Agencies need to become aware to what degree these groups can speak for tribal rights and interests and what their relationship is with both Tribal Councils and departments/programs. Relationships with these tribal groups could become an integral way an agency unit and a tribe decides to conduct informal dialogue, but it cannot be mistaken as consultation between an agency and tribe unless the tribal government designates it as such.

Tribal Area of Interest Maps

For those tribes whose tribal headquarters are within the project area, a map showing its aboriginal area of interest is shown in context with ICBEMP and state boundaries. These interest areas indicate the fundamental geographic range of interest for any particular group (that is, the approximate sum of such interest areas a tribal government represents for its member bands and people).

Individual tribal governments express their interest and concerns for tribal traditional uses, landscapes and resources, and needs of its communities within in the context of their own area of interest. A tribe's homeland is typically located near the center of its interest area and is where primary tribal use of resources and land occurs. Shared resource use areas (cross-utilization areas) are usually near interest areas' peripheries and contribute to reasons why tribal interest areas often overlap one another.

The boundaries of interest areas are necessarily vague and can only be approximated to encompass expansive areas of tribal interests and influences. They should serve as an aide to opening dialogue with individual tribes. **Tribal interest areas are not expressly or legal defined, but are open to ongoing interpretation and discussion on a project-by-project basis. They should not be interpreted to expand or limit tribal rights and interests nor agency responsibilities.** Those maps displayed in Appendix 8b represent areas used in the ICBEMP *Scientific Assessment* and do not reflect corrections provided by either the Coeur d'Alene or Kootenai of Idaho tribes.

Interest areas have sometimes been called a tribe's aboriginal territory, subsistence range, traditional use area, or zone of influence. The term 'usual and

accustomed area' by contrast, refers to Stevens Treaty language rights and interests, which are themselves smaller in area than Interest Areas, but may help define the spatial extent of a tribe's interest area.

Tribal Ceded Lands, Aboriginal Lands, or Court of Claims Maps

For those tribes with treaties, either those aboriginal territories ceded to the U.S. government or the aboriginal territories themselves are shown on maps in Appendix 8b based upon the legal descriptions provided in treaty language (Portland Area Jurisdiction, Department of the Interior, Bureau of Indian Affairs, Indian Treaty Boundaries Map, 1986). Only ceded and aboriginal lands located within the boundaries of the project area are shown on the General Information Sheet maps. The Shoshone tribe as found on the Fort Hall, Northwest band Shoshone and Wind River reservations has aboriginal territory, which extends outside the project's boundary given the Treaty with the Eastern Band Shoshoni and Bannock, 1868.

Ceded boundaries and reservation boundaries are precisely defined in United States legal documents. Two types of negotiated land areas are recognized: (1) ceded land area, which pertain only to those tribes that ceded lands to the U.S. government by treaty or agreement; and (2) exclusive use land areas, whose boundaries were established through a modern land claims process. Ceded territory boundaries were typically established by U.S. treaty negotiators, often prior to the actual treaty council meetings. Exclusive use area boundaries are based on arguments provided to the Federal Claims Commission, which tended to focus on "exclusive use" core areas and to exclude the full area of a tribe's subsistence range.

These two types of areas are normally geographically large, but usually much smaller than interest areas. Both are constructs developed as a result of U. S. Indian policy (treaties and the Indian Claims Commission Act) and are legally meaningful largely to address tribes' right and title to land. Ceded land may have importance where legal questions pertain, but as a spatial unit may lack traditional significance to Indian peoples. For example, as Indian case law has shown, usual and accustomed fishing sites and other traditional use locations are defined within interest areas, not within ceded territories or land claims boundaries.

Ceded boundaries, where they exist, tend to establish a modern-day version of exclusive use areas, serving to identify supremacy of a tribe's interests over other tribes in certain areas. They also form convenient administrative boundaries for tribal land use planning efforts and, in some cases, are viewed by tribal staff as defining the tribe's interest area.

Ceded lands, Court of Claims, and treaty aboriginal lands maps have not changed since the Draft EISs were published and therefore they were not re-printed in this appendix. These maps can be found in Appendix 1-2 in the Eastside Draft EIS and Appendix C in the UCRB Draft EIS. Area of Interest maps are included in this appendix, because they have been slightly modified from the Draft EISs to clarify their intent.

Evaluating Habitat and Harvestability, and Addressing American Indian Tribal Rights and Interests

Introduction

A primary concern of the Indian tribes in the Interior Columbia Basin Ecosystem Management Project area is the availability of the resources to which they have an interest. At issue is the availability of resources in sufficient quantities to allow harvest. A harvestable level would be one which would allow harvest or use of resources in sufficient quantities to satisfy the ceremonial, subsistence, and commercial needs of tribes at sufficient levels, while still providing for the conservation needs of the species. As noted in Chapter 2, it is recognized that differences exist in the meaning of harvestability with regard to U. S. case law and tribal desires for future socio-cultural conditions.

It is a legal responsibility of the federal agencies to consult with the tribes and to take into account their needs in analysis and decision-making processes. This section describes the method used to classify habitat rankings or outcomes to indicate trends and to indicate the habitat's ability to support harvestable resources.

How Trends Toward Harvestability Were Evaluated

The ICBEMP used trends in habitat status or outcomes to measure the habitat's capability to sustain populations. Using these concepts, trends in habitat conditions can be predicted for sustaining resources of interest to the tribes at harvestable levels.

The **Aquatic section** of Chapter 4 used changes in aquatic habitat capacity and population status to indicate trends. Habitat capacity and population status estimates for six key salmonid species at the 6th-field Hydrologic Unit Code (HUC) (subwatershed) were categorized as follows:

Population Status:

Strong - All major life history types that historically occurred are still present; numbers are stable or increasing; the population is likely to be at half or more of mean historical size or density; or the population or metapopulation within the subwatershed (or within a larger region of which the subwatershed is a part) probably contains at least 5,000 individuals or 500 adults.

Present - Spawning and rearing life stages occur in the subwatershed; populations may be strong or depressed. The probability of present is the sum of strong and depressed population status probabilities.

Habitat Capacity:

High - Sediment input and riparian conditions that influence the creation and maintenance of suitable habitat for salmonids have not been substantially altered or constrained by human

influences. The frequency of channel reorganizing events due to upslope activity also has not been changed. At the time of evaluation, the subwatershed supports approximately 75 to 100 percent of the potential habitat capacity.

Moderate - Sediment input, riparian conditions, and/or the frequency of channel reorganizing events have been altered by human activities such that, at the time of evaluation, a subwatershed supports 50 to 75 percent of the potential habitat capacity.

Low - Sediment input, riparian conditions, and/or the frequency of channel reorganizing events have been altered such that, at the time of evaluation, a subwatershed supports less than 50 percent of potential habitat capacity.

Changes in present-strong and high aquatic habitat capacity for the key species are estimated for each subwatershed that supports spawning and rearing habitat. Results are summarized for federal lands over the long term in Chapter 4. (See chapter 4 for further information on methodologies.) Changes in counts and probabilities provide an indication of trends in conditions towards “harvestable” populations. These changes can then be tracked through the modeling of scenarios by alternative to determine what factors reduce, improve, or maintain conditions affected by land management through time, thereby assessing likely broad-scale trends toward “harvestability.”

Trends in aquatic habitat and status were predicted on a broad scale based on the land management effects of the alternatives. By assessing the effects of the alternatives, judgements can be made on whether aquatic habitat capability or status will change, reflecting the likely trend of habitat and population conditions supporting harvestability. If habitat capacity and species status is projected to improve, then it is likely trends in condition that support harvestability will improve. The expected rate of improvement is reflected by the magnitude of change compared to current conditions and relative to other alternatives.

The effects of alternatives on terrestrial species, particularly the degree to which habitat conditions contribute to the long-term maintenance of plants and animals is presented in the Terrestrial and Social-Economic sections in Chapter 4. The evaluations provided a reasoned series of judgements about projected amounts and distributions of habitat and

the likelihood that such habitats would allow populations to persist over 100 years.

These data can then be used to determine if a habitat capacity will be maintained through time and how that may affect “harvestable populations.” By assessing the effects of the proposed action we can estimate trend in harvestable levels.

Habitat on federally managed lands continues to be an important factor contributing to the availability and harvestability of plant, fish, and animal species critical to the rights and interests of American Indian tribes. These approaches reflect how habitat trends toward harvestability were assessed by the ICBEMP. This should be used only as a starting point for continued consultation between field units and individual tribes in further defining means to identify and evaluate how federal habitat is faring and the implications of the results to species and harvestability.

Consideration of Habitat, Tribal Rights and Interests, and Harvestability in Implementation

Direction to address the rights and interests of tribes is provided throughout the EIS and specifically for harvestability in the Terrestrial and Aquatic Species sections. Each of the affected tribes has unique rights, interests, and opportunities which can best be discussed at finer scales between tribal representatives and land managers, rather than possibly being inaccurately predicted at the broad scale. Therefore, management direction tends to be process oriented, focusing on the expected outcome of implementation and relying on consultation with individual tribes at finer scales to bring more specificity to the analysis and/or decision making processes.

Additionally, while scale presents problems in terms of evaluating effects on specific species or resources critical to the rights and interests of tribes, scale is not the only factor which makes an assessment difficult at the broad scale. The primary factor is the individuality of each American Indian tribe within the basin. Individual tribes and tribal governments are unique, as are their rights and/or interests. For this reason, issues common to the rights and interests of the 22 involved tribes was the focus of the broad-

scale assessment and EIS. At finer scales, through consultation with individual tribal governments, agencies can begin to understand the unique rights and interests of a particular tribe and in so doing, be responsive to the issues and opportunities presented by that tribe.

Step-down processes should be conducted as typified by the management direction on this subject. A standard requires that “During EAWS or Subbasin Review, or prior to project implementation, federally recognized tribes shall be consulted to: (1) invite participation, (2) solicit data and information useful in the analysis/review, (3) identify if resources or species of significance to the tribe(s) are present, (4) characterize these resources or species using available information, (5) solicit tribally identified priorities and possible management and monitoring opportunities or indicators, and (6) use this information to provide context for finer scale analysis as well as to inform planning and decision-making processes.”

An important consideration in the characterization and analysis of these resources is the historical presence and/or occurrence of tribally significant species and resources. (A restoration guideline speaks specifically to consideration of historically occupied habitats.) A number of the tribes were concerned about land managers considering only those areas presently occupied by a species or resource, when the tribe traditionally used many areas where a species or resource critical to their rights and interests may not currently exist. “Available information” is meant to include information from all available sources including that information provided by tribal sources. In order to provide habitat capable of supporting harvestable resources or species, the agencies must understand what and where these resources are and how they relate and contribute to the ecosystem/landscape. As managers of their own land and natural resources, American Indian tribes may have data, information, or expertise that could be useful in informing agency planning and decision-making processes.

An additional consideration under the availability of sufficient habitat for harvestable resources is competition. The availability of any particular resource is influenced by competition for that resource. While some of the tribes in the basin have reserved rights associated with lands and resources, these off-reservation rights do not provide for exclusive use. There is increasing competition for many of the resources and lands used by the tribes. For example, it is becoming more and more common for the tribes to find themselves being outcompeted by commercial or recreation-related interests for resources that are an integral part of their culture and/or associated with reserved rights; the commercial harvest of huckleberries, mushrooms, and sweetgrass are prime examples. The same correlation exists for commercial or recreational use of fish and wildlife species, firewood, and some plants.

Consideration of tribal rights and interests, including harvestability, must be a part of agency decision-making processes. Information gained from these step-down processes should feed into subsequent decisions. Just as the agencies have typically examined and considered the impacts of land management actions on recreational and/or commercial uses, so shall we consider treaty and traditional uses where they exist. The consideration of harvestability is typified by management direction on this subject. For example, a standard states, “As part of site-specific NEPA analysis, affected federally recognized tribes shall be consulted to: (1) identify resources or species important to tribal rights and/or interests, (2) assess effects of the proposed action(s) on these resources and/or species, and (3) if it is determined that the project may negatively affect the continued harvestability of these resources or species of significance to tribes, then mitigate accordingly.”

Available resources: See the list of culturally significant plant species in Table 1, as a starting point for tribal consultation. Additional information can also be gleaned from the myriad of science reports involving those resources, areas, and species denoted by a respective tribe as important to their particular rights and interests.

Table 1. Starter List of Some Culturally Significant Plant Species.¹

Common Name	Scientific Name	Current Scientific Name
taper-tip onion	<i>Allium acuminatum</i>	
wild onion	<i>Allium spp.</i>	
alder	<i>Alnus incana</i>	
serviceberry	<i>Amelanchier alnifolia</i>	
hemp	<i>Apocynum cannabinum</i>	
pinemat manzanita	<i>Arctostaphylos nevadensis</i>	
bearberry	<i>Arctostaphylos uva-ursi</i>	
sagebrush	<i>Artemisia tridentata</i>	
saltbrush	<i>Atriplex confertifolia</i>	
balsamroot	<i>Balsamorhiza hookeri</i>	
balsamroot	<i>Balsamorhiza sagittata</i>	
Oregon grape	<i>Berberis nervosa</i>	
brodiaea	<i>Brodiaea grandiflora</i>	<i>Triteleia grandiflora</i>
buttons	<i>Brodiaea hyacinthina</i>	<i>Triteleia hyacinthina</i>
black moss	<i>Bryoria fremontii</i>	
mariposa lily	<i>Calochortus macrocarpus</i>	
sego lily	<i>Calochortus nutalli</i>	
camas	<i>Camassia leichtlinii</i>	
camas	<i>Camassia quamash</i>	
Indian potato	<i>Claytonia lanceolata</i>	
red willow	<i>Cornus stolonifera</i>	
hazelnut	<i>Corylus cornuta</i>	
hawthorn	<i>Crataegus columbiana</i>	
hawthorn	<i>Crataegus douglasii</i>	
giant wildrye	<i>Elymus cinereus</i>	
wild strawberry	<i>Fragaria vesca</i>	
wild strawberry	<i>Fragaria virginiana</i>	
yellow bells	<i>Fritillaria pudica</i>	
sunflower	<i>Helianthus annuus</i>	
cow-parsnip	<i>Heracleum lanatum</i>	
juniper	<i>Juniperus occidentalis</i>	
bitterroot	<i>Lewisia rediviva</i>	
Canby's licorice-root	<i>Ligusticum canbyi</i>	
Gray's licorice-root	<i>Ligusticum grayi</i>	
Canby's biscuit-root	<i>Lomatium canbyi</i>	
cous	<i>Lomatium cous</i>	
fern-leaf lomatium	<i>Lomatium dissectum</i>	
Gorman's biscuit-root	<i>Lomatium gormanii</i>	
early celery	<i>Lomatium grayi</i>	
Henderson's biscuit-root	<i>Lomatium hendersonii</i>	
big-seed lomatium	<i>Lomatium macrocarpum</i>	
purple lomatium	<i>Lomatium minus</i>	
celery	<i>Lomatium nudicaule</i>	
Piper's biscuit-root	<i>Lomatium piperi</i>	
early celery	<i>Lomatium suksdorfii</i>	
wild mint	<i>Mentha arvensis</i>	
mentzelia	<i>Mentzelia albicaulis</i>	
blazing-star	<i>Mentzelia laevicaulis</i>	
Indian tobacco	<i>Nicotiana attenuata</i>	
wocas	<i>Nuphar polysepalum</i>	<i>Nuphar lutea ssp. polysepala</i>
Indian rice-grass	<i>Oryzopsis hymenoides</i>	
Bolander's yampah	<i>Perideridia bolanderi</i>	

Table 1. Starter List of Some Culturally Significant Plant Species.¹

Common Name	Scientific Name	Current Scientific Name
red-root yampah	<i>Perideridia erythrorhiza</i>	
yampah	<i>Perideridia gairdneri</i>	
apos	<i>Perideridia oregana</i>	
reedgrass	<i>Phragmites communis</i>	<i>Phragmites australis</i>
whitebark pine	<i>Pinus albicaulis</i>	
pinon pine	<i>Pinus monophylla</i>	
ponderosa pine	<i>Pinus ponderosa</i>	
Indian plum	<i>Prunus subcordata</i>	
chokecherry	<i>Prunus virginiana</i>	
Indian bread-root	<i>Psoralea esculenta</i>	<i>Pedimelum esculentum</i>
oak	<i>Quercus garryana</i>	
spring parsley	<i>Rhizopterus plurijugas</i>	<i>Cymopterus corrugatus</i>
wild currant	<i>Ribes aureum</i>	
rose	<i>Rosa nutkana</i>	
rose	<i>Rosa spp.</i>	
blackberry	<i>Rubus spp.</i>	
wapato	<i>Sagittaria cuneata</i>	
wapato	<i>Sagittaria latifolia</i>	
willow	<i>Salix spp.</i>	
elderberry	<i>Sambucus cerulea</i>	
tule	<i>Scirpus acutus</i>	
tule	<i>Scirpus validus</i>	
buffalo berry	<i>Shepherdia argentea</i>	
wada	<i>Suaeda depressa</i>	<i>Suaeda calceoliformis</i>
tauschia	<i>Tauschia hooveri</i>	
cattail	<i>Typha latifolia</i>	
low huckleberry	<i>Vaccinium caespitosum</i>	
delicious huckleberry	<i>Vaccinium deliciosum</i>	
huckleberry	<i>Vaccinium globulare</i>	
huckleberry	<i>Vaccinium membranaceum</i>	
oval-leaf huckleberry	<i>Vaccinium ovalifolium</i>	
cranberry	<i>Vaccinium oxycoccus</i>	
tobacco-root	<i>Valeriana edulis</i>	

¹ May be used as a beginning point for consultation with affected federally-recognized American Indian tribes.

Source: Croft et al. 1997.

Government-to-Government Consultation with American Indian Tribes

What is government-to-government consultation?

Government-to-government Terminology

The U.S. government has a trust responsibility to federally recognized tribes. Additionally, all tribes have off-reservation interests within the Columbia Basin, and some have off-reservation rights reserved through treaty or executive order language. Agencies are required to manage the lands under their stewardship with full consideration of the federal trust responsibility and these tribal rights and interests, particularly reserved rights where they exist.

The term ‘government-to-government’ recognizes the sovereign status of tribal governments, their unique relationship with the federal government, and the federal trust relationship between the federal government and federally recognized tribes.

From a federal perspective, government-to-government consultation is an ongoing process culminating in a negotiated understanding or agreement between governmental entities (federal and tribal). Because consultation is an ongoing process, there will be lesser or greater involvement of tribal governmental officials and agency policy makers depending on the goal of consultation and the particular point in the process where consultation is occurring. For example, in the earliest phases of consultation on a proposed action, the goal of consultation may be information sharing rather than consensus. In this case, the role of federal line officers and tribal government officials may be to listen and learn so they have a solid foundation on which to build future agreements and shared understanding. In another

phase, tribal and federal staff specialists may be more heavily involved than either federal or tribal policy makers. For example, one phase in the process may include data collection, information gathering, effects analysis or monitoring.

The goal of consultation may be for specialists to work jointly to address concerns or opportunities previously identified by federal/tribal decision makers. Toward the end of the consultation process, the primary participants may again be federal and tribal decision makers, and the goal of consultation would become negotiations toward a mutually agreed-upon solution. As in intergovernmental consultation, consensus is desired and shared understanding of and commitment to implementation of management direction are the goals of government-to-government consultation. However, when consensus cannot be attained, federal land managers retain authority and decision-making responsibility and accountability for lands under their jurisdiction. In this instance, the federal decision maker(s) will document how issues were addressed or mitigated, or they will explain why mitigation is not possible in their decision.

Tribally-defined Consultation

As described in the example above, some tribal governments would only consider the culmination of the consultation process to be government-to-government consultation, not the dialogue leading up to the negotiated discussions. For these tribal governments, only when both “negotiated agreements” and “federal and tribal decisionmakers” are involved is there government-to-government consultation. Other tribes may think of the entire consultation process, including specialist discussions, as government-to-government consultation. Still others may not consider the process complete until the negotiated agreements have been formally documented and signed by both federal and tribal representatives, while another may prefer an oral understanding where no written agreement is made.

Tribes are cognizant of what level of the federal organization is represented in government-to-government consultation. Heads of their respective tribal governments expect that in negotiations with the state, the governor would be present or represented; negotiations with the federal government would be expected to be held with the president of the United States. On Forest Service and BLM projects, most tribes recognize the BLM district or area manager, forest supervisor, or district ranger as

the federal representative with delegated authority from the president of the United States. Therefore, the federal official with delegated authority for the involved decision is typically the appropriate federal official for government-to-government discussions with a given Tribal Council. Sometimes, however, tribal officials may want to discuss the decision at the next highest level to ensure that an agreement negotiated at this level will hold and not be overturned by a higher level decision maker.

It is critical that agency line officers gain an understanding of how respective tribes define government-to-government consultation so that they approach the relationship in a manner (a) that will accommodate consultation to the greatest degree practicable and (b) that ensures appropriate federal representatives are involved at the appropriate time in discussions with the tribe.

Key Ingredients to Federal–Tribal Relations

Managers must recognize that while building and maintaining a relationship takes time, energy, and resources, there is great value in doing so. American Indian tribes not only have expertise and information which can inform federal decisions, but they also have a deep and abiding connection to these lands. The opportunity exists for federal land management to be enhanced by nurturing an effective working relationship with affected tribes. Some key components enable a successful relationship: commitment, mutuality, interdependence, respect, and an emphasis on the long term.

Commitment

Probably the greatest asset an individual can bring to any relationship is commitment—the notion that they are willing to put forth the effort to make a relationship work.

Mutuality

American Indian tribes have rights and/or interests in the federal lands administered by the Forest Service and the BLM. There is, therefore, mutual benefit in working collaboratively for the health and productivity of these lands. Often, however, land

managers focus only on what the federal benefits are. Federal managers need to work with respective tribes to ascertain and emphasize tribal as well as federal government benefits. The relationship should not be about others helping to do one partner's work, but rather the mutual benefit gained from accomplishing or working toward a common goal.

Interdependency

The term “interdependency” describes a relationship where independent decisions are made, within respective authorities, but in support of a shared or common vision. In government-to-government consultation, the Tribe and the agency each bring their own span of authority and responsibility to the relationship. While consensus agreement is the goal of consultation, and while both tribe and agency strive to define or arrive at a common vision or objective, when this is not possible then the federal manager makes the decision and accounts for the consideration and accommodation of the tribe's rights and interests. Similarly, this is how intergovernmental collaboration with governmental partners (other federal agencies, states, tribes, counties) is defined.

Respect

Federal land managers must understand and recognize the sovereign status of tribal governments and treat tribal officials with the respect accorded representatives of governments. Managers should also actively learn about the tribe (culture, government, protocols) so that cross-cultural communications have a greater opportunity to be successful. Also, representatives of American Indian tribes have knowledge, expertise, history, and experiences which should be solicited and used by the agency. While federal timelines are important, accommodating involvement and respecting the commitments of tribal partners is also important. Finally, managers should, as a matter of course, be able to demonstrate how tribal involvement contributed to agency decisions and actions.

Trust

Trust is built over time. However, in large part, the ability for a federal manager to ensure some measure of confidentiality to a tribe or tribes is critical. While federal managers cannot protect and/or restore what they don't know about, neither can the tribe be

expected to provide specific information to the agencies without some assurance of its being kept confidential, much like the treatment of proprietary information in the business arena. Managers and employees should accommodate tribes on this issue and work together to build a mutually agreeable approach.

Long-term Relationship

Federal managers must emphasize the long-term nature of the federal-tribal relationship. It is common to approach a relationship differently if we recognize it will be for the long term. The history of the federal-tribal relationship has been a rocky one; for American Indian people with an oral tradition, history is as recent as its last telling. Over time, the tribes have developed a great deal of distrust for the federal government. While Federal managers are not responsible for all that has occurred, they must recognize that the federal-tribal relationship did not

begin and will not end with them. While the past can't be changed, the health and productivity of the current relationship is within the control and responsibility of the line officer, who should emphasize the ongoing nature of the relationship.

In addition to the unique federal trust relationship with American Indian tribes, most tribes in the basin have significant land holdings. They are land managers and have a unique understanding of and connection to the land. Furthermore, the federal lands administered by the Forest Service and the BLM were once a part of the aboriginal homeland of American Indian people. The tribal rights and interests associated with the lands and resources have existed and will continue to exist over time. The tribes and the BLM and Forest Service all have a vested interest in working together for the land and resources.